IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.2828 OF 2004

Nariman Bhavan Premises Co-operative Society Ltd. & Anr. ...Petitioners.

Vs.

Municipal Corporation of Brihan Mumbai & Ors. ...Respondents.

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Mr. Milind Sathe i/b. Junnarkar & Associates for the Petitioners.
Mr.Vinod Mahadik for Respondent Nos.1 to 4.

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CORAM : DR.D.Y.CHANDRACHUD, J.

October 7, 2006.

P.C.

It is not disputed before the Court that the issues which arise before the Court in the present proceedings under Article 226 of the Constitution are covered by the judgment of a Division Bench of this Court in **Municipal Corporation of Brihanmumbai vs. Dalamal Tower Premises Co-operative Society Limited**,[1] where the conclusions of the Court are as follows:

(i) Where the property comprises of various units and the said property is being assessed as one property, the actual and factual position of each unit has to be kept in mind including as to whether such unit is controlled by Rent Control Act.

(ii) If a particular unit is exempted under section 3(1)(b) of the Maharashtra Rent Control Act, 1999, and is in

1 2006 (3) Bom.C. R. 557

tenancy of a third party, it is relevant for the Corporation to take this factor into consideration along with other relevant factors while computing the rateable value of the entire property. This is not inconsistent with the legal position that in computing rateable value of the property owned by an assessee, the notional rental which a hypothetical tenant would pay for such property is relevant.

(iii) The Jeevan Jyot case shall not be applicable to a fact situation where though society is the owner of the entire building but some of its members had let out their respective units to the tenants exempted from the Rent Control Act.

(iv) For the determination of rateable value of the property 'Dalamal Tower', the Corporation was justified in taking into account the estimate of rent contained in its circulars in respect of the units let out by the members of the petitioner-society to the tenants exempted under the Maharashtra Rent Control Act, 1999, though the assessment is of the entire building as one property.

(v) The conjoint reading of sections 166 and 167 of the Bombay Municipal Corporation Act, 1888 does not suggest that the alteration in the assessment book under section 167 could override the existing authenticated entry in the assessment book after fellowing the procedure again as contemplated under sections 162-165.

(vi) The orders dated 24th March, 2004 do not seek to enhance the tax retrospectively in the light of the liberty granted by this Court in its order dated 23rd October 2002 and, therefore, the assessment orders effective from 1-4-2000 are not illegal.

(vii) The Single Judge erred in allowing the petition in terms of prayers (a) and (b).”

This petition would have to be disposed of in the light of the judgment of the Division Bench and is accordingly disposed of. The judgment of the Division Bench has been carried in appeal to the Supreme Court. An interim order has been passed in the pending appeal. Counsel appearing on behalf of the Petitioners submitted that it would be appropriate for this Court, while disposing of the Petition, to pass an interim order in terms of the interim order passed by the Supreme Court on 11th September 2006 to govern the appeal pending against the judgment of the Division Bench. It would not be appropriate for this Court when the petition is disposed of finally to pass an interim order. It would be open to the Petitioners to seek their remedies in law.

The Petition is accordingly disposed of in terms thereof. Rule discharged.

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